



**PTN v PWT (Matrimonial Cause E013 of 2021)
[2023] KEHC 2947 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CAUSE E013 OF 2021**

RB NGETICH, J

MARCH 30, 2023

**IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT,
2013**

BETWEEN

PTN APPLICANT

AND

PWT RESPONDENT

JUDGMENT

1. The applicant filed an Originating Summons filed on December 6, 2021 seeking to have the following property declared as matrimonial property as it was acquired during the subsistence of the marriage:-
 - (a) Apartment Number A9, on 5th floor block A together with one (1) parking bay, erected on land parcel no. Dagoretti/Riruta/4616 and situated at Dagoretti, within the Republic of Kenya.
 - (b) Apartment Number 3B, erected on Tilted Number Kiambaa/Ruaka XXXXX and situated at Ruaka, within the Republic of Kenya.
 - {c) Residential Plot No XXXX measuring approximately 30 by 80 ft and contained in share certificate no. XXXX at Kimuri Housing Company Limited and situated at Kasarani within the Republic of Kenya.
 - (d) Portion 25 of ERF 6 CATO Manor Registration Division FT and province of Kwa Zulu Natal in extent 770 Seven hundred and seventy square meters and situated in Durban within the Republic of South Africa.
2. The applicant proposed the property be distributed as follows:
 - a. Peter Thumbi Ndung'u -Residential plot No XXXX.



Apartment No XXXX Kimbaa/ruaka XXXX

b. Peninah Wanjiku - Apartment XXXX, on the 5th floor and 1 parking

Bay on Dagporetti/ riruta/XXXX.

Portion XXXX CATO Manor

3. The application is premised on the grounds that the property was obtained during the subsistence of the marriage; the marriage between the Applicant and the Respondent has been dissolved and a decree absolute issued vide Kikuyu SPM Divorce Cause No 12 of 2020. There is no dispute regarding the distribution of the properties.
4. The applicant filed an affidavit in support of the application sworn on December 6, 2021. He disposes that the marriage with the Respondent was dissolved and a decree absolutely made on August 3, 2021. The above mentioned properties were acquired during the subsistence of the marriage and the proposed mode of distribution is not disputed.
5. The applicant contends the respondent has not filed any response and seeks to have the application allowed as prayed.
6. On July 28, 2022, I directed that the application be served upon the Respondent. The Applicant has filed an Affidavit of Service to the effect that service was through Email. I am satisfied that the Respondent was duly served as I have seen the email correspondences between the Respondent and the Applicant's counsel.
7. Section 7 of the *Matrimonial Property Act, 2013* provides that Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.
8. It is not disputed that the property in question is the matrimonial property and neither is the mode of distribution contested by the Respondent.
9. From the foregoing, I proceed to distribute the property as per prayer 2 of the Originating Summons dated February 21, 2021.
10. Final Orders:-
 - 1) The matrimonial property is distributed as follows;
 - (i) Peter Thumbi Ndung'u Residential Plot No 116 and Apartment No 3B Kimbaa/ Ruaka 6394.
 - (ii) Peninah Wanjiku Apartment No A9, on the 5th floor and 1 parking Bay on Dagoretti/ Riruta/4616 and Portion 25 CATO Manor.
 - 2) Each party to bear their own costs.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET

THIS 30TH DAY OF MARCH, 2023

.....

RACHEL NGETICH

JUDGE

In the presence of:

Martin – Court Assistant



Ms Wanjiru Njihia for the Applicant

No appearance for the Respondent

